Written Testimony of Susan B. Washer

Financial Services Committee, Capital Markets Subcommittee, March 9, 2023

Summary of my education, experience, and affiliations. Ms. Washer has developed an impressive career with diverse experience in the pharmaceutical industry, extensive corporate start-up experience, and significant community and industry association leadership. She brings a decade of experience in pharmaceutical management and research with Abbott Labs and Eli Lilly & Company and has more than 30 years of senior management experience with entrepreneurial firms, including three start-ups. At Applied Genetic Technologies Corporation, (AGTC), she secured private and public investments of over $300 million, negotiated and closed two major collaborations with top biotech companies resulting in an additional $160 million of cash in-flows, and led the Company in efficiently completing numerous critical scientific milestones, which culminated in the successful sale of the Company in November 2022. She was an appointed member of the Small Business Capital Formation Advisory Committee for the U.S. Securities and Exchange Commission, Associate Vice President of the Emerging Companies Governing Board of Biotechnology Innovation Organization (BIO), also serving on the full Board of Directors and Executive Committee, a board member of the Alliance for Regenerative Medicine, and remains a long-standing board member of BioFlorida. She earned her undergraduate degree in Biochemistry from Michigan State University and her MBA from the University of Florida, where she was one of the first graduates from the Warrington College of Business Entrepreneurship program.

Summary of proposed testimony. Technical innovation is critical to development of new treatments for human disease and access to capital is exceptionally important due to high costs and timelines. A research study published in *JAMA* puts the median cost of development of a new product to treat human disease at $985M over approximately 12 years of basic research, pre-clinical development, human clinical trials, and finally regulatory filings with the FDA. Additionally, development is very risky with only 8-10% of discovery phase products being approved and provided to the public. These costs and timelines simply cannot be fully funded with capital available from private sources alone and so broad, appropriate and geographically wide spread access to the public capital markets needs to be maintained. The JOBS Act paved the way for smaller, more geographically dispersed, and diverse innovative companies to access public markets in order to fund full development of new products in the life sciences industry.

As there has been a recent constriction of the markets, the provisions of the JOBS Act remain vital to encouraging ongoing product development. The transparency and liquidity of our public markets are to be commended, however, expanding public market benefits to more companies requires an easier path to going and remaining public, especially for smaller innovative companies in areas outside of New York, Massachusetts and California. 78% of entrepreneurs say access to capital is limiting the growth of their business and therefore is limiting employment opportunities and development of new technologies. The flexibility afforded by the rules for Emerging Growth Companies and Smaller Reporting Companies,

including exemptions, scaling, and phase-ins for new requirements where appropriate, allows smaller companies to build their businesses and balance the needs of companies and investors while promoting strong and effective U.S. public markets.

In particular, when AGTC was preparing to go public we benefited from the long period of time we could communicate with investors to educate them on the rare disease for which we were using a unique technology to develop a first potential treatment. Smaller companies do not usually have the same immediate and ongoing access to investors as do larger established entities. The JOBS Act allowed AGTC to spend several months meeting with multiple investors, which we believe helps investors as well as companies. Further, when we went public with under 30 total employees, the ability to phase in the more extensive reporting and internal accounting procedures meant that we were able to spend more of our funds on product development. A study by Price Waterhouse states that the cost range for going public when raising up to $100M is between $2.3 and $16.3M and ongoing compliance costs are approximately $1.4M, a number that has increased 27% recently. A lack of access to JOBS Act provisions would only increase these numbers. As a pre-revenue research company, meeting scientific and clinical milestones is the most critical factor. We provided regular public reports on our status during this time period and had constant communication with our investors and as such, do not feel that the phased in technical reporting requirements adversely affected the investors' knowledge of our company.

Even after a small company is public, staying public and having ongoing access to capital can be challenging. From 1982 to June 2022, the number of small listed companies has drastically declined from 4,144 to 1,587 while large companies have increased from 897 to 2,647. Smaller companies have less research coverage, poorer access to meeting with investors, and are more adversely affected by market downturns as investors and research analysts focus their attention on larger monetary holdings. Legislators and regulators should continue to recognize these differences when reviewing laws and regulations in order to not take on a "one size fits all" approach.

As discussed above, while the JOBS Act was successful it does remain challenging for small companies to access capital so extending and advancing the successful programs contained with the Act is prudent to continued innovation. In our industry emerging companies with no revenue but great promise can actually have large market valuations and some have substantial initial revenues that should in no way deter from their acceptance as small innovative companies and so I would fully support expanding the EGC status to companies that seem larger, especially in the biotechnology industry. Further extending the timeframe to qualify as an EGC past 5 years is really very critical in an industry where it takes up to 12 years to receive product approval. This is true not only for human biotechnology companies but for industrial and agricultural biotechnology companies as well. Extending the timeframe gives these critical innovators time to mature their products and become profitable while providing valuable technology to US citizens.

Further the ability of EGC companies to spend extended time talking with investors was exceptional successful and beneficial to all parties and there has been no harm to investors documents. In fact, as mentioned, there is a good argument to be made that this was equally beneficial to investors in helping them get to know companies and make good investment decisions. Therefore, the proposal to expand these "testing the waters" meetings to all issuers makes good sense to increase transparency and education opportunities more widely available.

In the life sciences industry, the vast majority of small companies do not become ready for the public capital markets without substantial prior access to private funds, including angel seed funding and venture capital, in order to develop their technologies through proof of concept. Without this important private funding the number of companies ready to enter the public markets will decrease. Therefore, it remains important to promote a diverse ecosystem of investors, including support of small regional local funds, support of diversified pooled investment funds, and a "do no harm" approach to any changes to current Regulation D rules.

Further, it is critical that in these early discovery phases companies maintain the ability to remain private with investors that have a deep understanding of each industry and the research required to advance innovation. Most of these companies have no revenue, small staffs, and spend the vast majority of their capital on expensive research and development. It would be time consuming, distracting, and expensive for these companies to be required to go public. In fact, going public too early may result in these companies failing. In many cases these private companies, even during the research phase, do require large sums of capital that may come from a fairly large number of investors. However, most of these investors are Qualified Institutional Buyers and Institutional Accredited Investors with deep knowledge of and experience in the industry in which they are participating. While going public may provide knowledge of these companies to be more broadly available it will not necessarily provide more information to that company's specific investors as, at least is the biotechnology industry, they generally sit on the board and/or are in close communication with company management.

In conclusion I believe that technology innovation is important to the US economy and its citizens well-being and a broad and diverse ecosystem of capital markets access is important to the success of small innovative companies.